



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Introduced:	02/17/11	Bill No:	Assembly Bill 711
Tax Program:	Property	Author:	Lara
Sponsor:	California Assessors' Association	Code Sections:	RTC 167
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This bill shifts the burden of proof to a taxpayer in an assessment appeal hearing of an owner-occupied single-family dwelling if it is a vacation or secondary home.

ANALYSIS

CURRENT LAW

Revenue and Taxation Code Section 167 provides for a rebuttable presumption regarding the burden of proof in favor of a taxpayer in an assessment appeal hearing involving the imposition of a tax on, or the assessment of, an owner-occupied single-family dwelling.

Section 218 provides that the homeowners' exemption does not extend to property that is a vacation or secondary home of the owner. It also does not extend to a property that is vacant, rented, or under construction on lien date.

PROPOSED LAW

This bill would add subdivision (c) to Section 167 to provide that an owner-occupied single-family dwelling means a single-family dwelling that is the owner's principal place of residence and that qualifies for a homeowners' property tax exemption.

IN GENERAL

Presumptions. Property tax assessments, and some factual circumstances on which property tax assessments are based, carry certain legal presumptions determining the manner in which evidence is presented as well as the quantum of evidence that a party is required to present. Under the Evidence Code, a *presumption* is defined as:

... an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. §600

A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. §601

Both the presumption affecting the burden of producing evidence and the presumption affecting the burden of proof may be used in an appeals hearing. Evidence Code Section 606 provides that the effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proving the nonexistence

of the presumed fact. Depending upon the matter in issue, a presumption may operate against either the assessor or the applicant.

An appeals board must apply an applicable presumption as the starting point for determination as to which party has the burden of the production of evidence. The appeals board then proceeds with examination of the evidence to determine whether the evidence is sufficient to rebut the presumption and to establish a different value for the protested property. If the presumption operates against the applicant and the applicant fails to present evidence sufficient to rebut the correctness of the assessed value, at the request of the assessor, the appeals board will dismiss the case without requiring the assessor to provide evidence substantiating the assessed value. If the appeals board determines the applicant has presented evidence sufficient to make a prima facie case, the burden shifts to the assessor to present evidence to support his or her opinion of value. *Fujitsu Microelectronics, Inc. v Assessment Appeals Board* (1997) 55 Cal.App.4th 1120. However, if the presumption operates against the assessor and the assessor fails to present evidence sufficient to rebut the presumption, the appeals board should rule in favor of the applicant providing that there is substantial evidence in the record to support the applicant's value.

Presumption of Correctness. The property tax system is based on the assumption that county assessors properly perform their assessment duties in accordance with law and other applicable standards. Evidence Code Section 664 provides that "it is presumed that official duty has been regularly performed." With regard to assessments courts have held that "[i]t will be presumed, in absence of contrary evidence, that assessor regularly and correctly assessed property for taxation." *E.E. McCalla Co. v. Sleeper* (1930) 105 Cal.App. 562

The presumption of correctness operates against the applicant and the applicant may overcome it by presenting substantial, competent evidence different than the assessor's sufficient to make material the inquiry as to whether the assessor's methods were proper. *Campbell Chain Co. v. County of Alameda* (1970) 12 Cal. App.3d 248

Property Rule 321 relates to the burden of proof during an appeals hearing and provides, in part:

- (a) Subject to exceptions set by law [of which an owner-occupied single-family dwelling is one], it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

Where the assessor holds the presumption of correctness, the appeals board then proceeds with examination of the evidence to determine whether the applicant's evidence is sufficient to establish an opinion of value and that the evidence demonstrates that the assessor did not establish a correct assessment.

Exceptions. For assessment appeals hearings, there are five instances when the burden of proof shifts to the county assessor; that is, the county assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are appeals involving:

- The value of owner-occupied single-family dwellings;
- Penalty assessments;
- Escape assessments;
- Nonenrollment of a purchase price; and
- When the county assessor intends to request a higher assessed value than is on the roll.

BACKGROUND

Revenue and Taxation Code Section 167 was added by SB 223 (Statutes 1976, Ch. 69). This bill was introduced by Senator Wedworth. A letter from the Board of Equalization to then Governor Brown, dated March 18, 1976, sheds light on issue giving rise to the original legislation.

“It is our understanding that the author’s interest in the bill stems from an assessment appeals board hearing in Los Angeles County in which he appeared for the taxpayer. After hearing his testimony, the assessor stated he would stand on the roll as submitted and the board ruled for the assessor. Apparently it was the opinion of the assessor and the board that the author had introduced no evidence to refute the assessor’s value. As a result of that experience, we understand, the author felt it was improper for the assessor to introduce no evidence to support his value and sought to require introduction of that evidence.”

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Assessors’ Association to correct and clarify that the protection in Section 167 is intended for homes that are the principal place of residence of the owner.
2. **Issue.** According to the sponsor, the burden of proof in favor of the taxpayer in an assessment appeal hearing should be limited to principal places of residence and should not apply to vacation homes. The sponsors state that this bill is consistent with the original intent of Section 167
3. **Recent Case.** A recent Third District Court of Appeals *Farr v. County of Nevada* (2010) held that the appeals board failed to apply the statutory presumption affecting the burden of proof in favor of the homeowner in a case involving a vacation home. The case was remanded to the appeals board for a new hearing. There appeared to be some confusion at the appeals hearing concerning the order of presentation and the burden of proof regarding an owner-occupied single-family home that was not the owner’s principal place of residence. At the initial hearing, the property owner gave his presentation first to the appeals board.
4. **Presumption affecting burden of proof advantage given to homeowners.** Appeals hearings are conducted informally so that both the taxpayer and the assessor can proceed without an attorney. Owners of single-family residences generally represent themselves at appeals hearings without assistance from an attorney or tax representative. Usually, these applicants are novices to the assessment appeals process and have limited knowledge of property tax appraisal and appeals hearing procedures. With owner-occupied single-family dwellings, the owner’s opinion of value in an assessment appeal is presumed correct and the burden is on the assessor to overcome the presumption. The burden of proof

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requires proof by a preponderance of the evidence. Procedurally, the assessor would be required to make his presentation with supporting evidence to the appeals board first.

5. **This bill removes the advantage for vacation or secondary homes.** The new definition would serve to place the burden of proof in an assessment appeal hearing involving the assessment of a vacation or secondary home on the property owner. In practical application this means that at an appeals hearing the property owner would proceed first and would have the burden of the production of evidence relevant to the full value of the property or other issue presented by the appeal application.
6. **Other instances shifting burden of proof.** There are four other instances whereby the burden of proof shifts to the assessor; that is, the assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are penalty assessments, escape assessments, nonenrollment of purchase prices, and when the assessor intends to request a higher assessed value than is on the roll.
7. **Standing on the presumption of correctness.** Except as noted previously, the assessor holds the presumption of correctness. The circumstances that provoked the enactment of Section 167 was a reaction to the assessor standing on the presumption of correctness and making no explanation of the appraisal in an appeal hearing involving a single family residence where the taxpayer had failed to meet his burden of proof.

COST ESTIMATE

The BOE would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law

REVENUE ESTIMATE

This measure has no direct impact on the revenue.

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